

BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of )  
 ) MUR 6711  
FreedomWorks for America )  
and R. Russ Walker, as Treasurer )

RESPONSE TO THE SUPPLEMENTAL COMPLAINT

Respondents FreedomWorks for America ("FWFA") and R. Russ Walker, as Treasurer (collectively "Respondents"), hereby respond to the supplemental complaint filed in the above-captioned matter. Like the original complaint, the supplemental complaint is legally deficient because it fails to satisfy the requirements of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Federal Election Commission ("Commission") regulations. The supplemental complaint's allegations are deficient in two ways: First, the sole claim against Respondents is a bare, conclusory postulation that FWFA knowingly received unlawful contributions, without a single factual allegation supporting that conclusion; and, second, the supplemental complaint rests entirely on unverifiable allegations supposedly relayed to the Washington Post by anonymous sources whose identities are undisclosed and whose credibility is indeterminable. The complaint, even as supplemented, thus fails to meet the threshold for a reason to believe finding and we respectfully request that the Commission dismiss the complaint, take no further action, and close the file.

Discussion

Under the Act, regulations, and Commission precedents, a complaint must describe an actual violation of law and cannot rest on undisclosed sources. The Commission must dismiss this complaint because it fails to meet both of these basic requirements.

**I. The conclusory, unsupported allegations in the supplemental complaint are legally deficient and do not describe a violation of the Act or Commission regulations.**

Put simply, the supplemental complaint fails to allege any facts that constitute a violation of the Act and Commission regulations. The Complainants attempt to shift the burden to the Respondents with conclusory speculation that the Respondents “may” have violated the Act by “arranging”—and apparently thus knowingly accepting—contributions that Complainants suggest may have been unlawful. Supplemental Complaint ¶ 5; *but see Citizens United v. Federal Election Comm’n*, 130 S.Ct. 876 (2010). Those conclusory and unsupported allegations fail to satisfy the basic requirement that a complaint “contain a clear and concise recitation of the facts which describe a violation of a statute or regulation over which the Commission has jurisdiction.” 11 C.F.R. § 111.4(d)(3) (emphasis added). *See also* MUR 4850 (Deloitte & Touche, LLP, et al.), Statement of Reasons of Commissioners Darryl R. Wold, David M. Mason, and Scott E. Thomas at 2 (“A mere conclusory allegation without any supporting evidence does not shift the burden of proof to respondents.”). For this reason alone, the Commission must find there is no reason to believe a violation occurred and dismiss the complaint.

**II. The supplemental complaint’s sole reliance on anonymous sources in a newspaper article further precludes a reason to believe finding under the Act and Commission precedents.**

The supplemental complaint is also deficient because its conclusory allegations are attributed solely to anonymous sources in the attached Washington Post article. The Act provides, and Commission precedents hold, that allegations based on anonymous sources are not credible and thus legally are an insufficient basis for the Commission to find reason to believe. The Commission must adhere to the Act and follow its precedents and find no reason to believe in this matter.

The Act requires that complaints to the Commission be “signed and sworn to by the person filing such complaint, shall be notarized, and shall be made under penalty of perjury.” 2 U.S.C. § 437g(a)(1). This requirement ensures that investigations are based upon reliable and trustworthy

statements, rather than anonymous allegations made for political gain. A complainant that makes a reckless or false statement in a complaint can be held accountable for his perjury.

Thus, part of the Congressional intent behind this requirement is to prevent intrusive fishing expeditions solely on the basis of newspaper articles containing hearsay. Filing a complaint based only upon a newspaper article, especially one with an unnamed source, insulates a political opponent – the individual submitting the complaint is only swearing that he heard another make the allegation. Political opponents can easily find anonymous sources to make such claims for them to avoid making such statements themselves under penalties of perjury, and also removing any opportunity for the respondent to hold the complainant accountable for making a reckless or false statement. Permitting investigations on the basis of an unnamed source in a newspaper article would allow political opponents to circumvent § 437g(a)(1).

The Act specifically provides that the “Commission may not conduct any investigation or take any other action under this section solely on the basis of a complaint of a person whose identity is not disclosed to the Commission.” 2 U.S.C. § 437g(a)(1); *see also* 11 C.F.R. § 111.4(b)-(d). The plain language and spirit of this provision provides that anonymous sources cannot sustain a reason to believe finding. *See* MUR 6296 (Kenneth R. Buck, et al.), Statement of Reasons of Commissioners Caroline C. Hunter, Donald F. McGahn and Matthew S. Petersen at 6-7 (“[T]he Commission must identify the sources of information and examine the facts and reliability of those sources to determine whether they ‘reasonably [give] rise to a belief in the truth of the allegations presented.’” (second alteration in original)); *see also* MURs 5977 and 6005 (American Leadership Project, et al.), Statement of Reasons of Commissioners Matthew S. Petersen, Caroline C. Hunter and Donald F. McGahn at 6, n. 20 (“[A]dherence to the Commission’s regulations regarding sources of information contained in complaints cautions against accepting as true the statements of anonymous sources (especially since the Commission’s regulations expressly prohibit the

consideration of anonymous complaints)." (citation omitted)). Moreover, this statutory provision means that Congress clearly intended that the identity of the sources of the allegation must be disclosed so that Respondents have a fair and meaningful opportunity to respond. If Respondents are denied the source's identity, such as here where the allegations are based on anonymous sources in a newspaper article, finding reason to believe under such circumstances would manifestly violate Respondents' due process rights and the principles of fundamental fairness.

The Commission also needs each source's identity so that it has the information necessary to weigh the credibility of allegations. "The Commission must have more than anonymous suppositions, unsworn statements, and unanswered questions before it can vote to find RTB and thereby commence an investigation." MUR 6056 (Protect Colorado Jobs, Inc.), Statement of Reasons of Commissioners Matthew S. Petersen, Caroline C. Hunter and Donald F. McGahn at 6, n. 12; *see also* MUR 5141 (James P. Moran, Jr., et al.), Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Danny L. McDonald, Bradley A. Smith, Scott E. Thomas, and Darryl R. Wold at 2 ("Unless based on a complainant's personal knowledge, a source of information reasonably giving rise to a belief in the truth of the allegations must be identified."). "Plainly, mere 'official curiosity' will not suffice as the basis for FEC investigations, as it might in [other agencies]." *FEC v. Machinists Non-Partisan Political League*, 655 F.2d 380, 388 (D.C. Cir. 1981). Here, the allegations are not based on the Complainants' personal knowledge at all, but rather on anonymous statements in a Washington Post article.

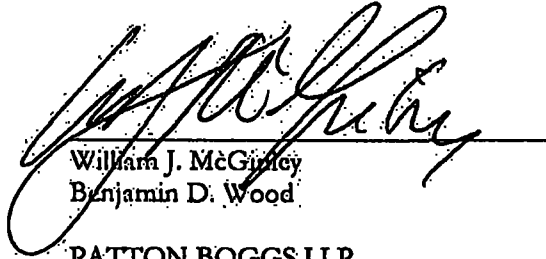
As with conclusory allegations lacking factual support, the Commission similarly may not shift the burden of proof to Respondents by requiring them to respond to unverifiable allegations from anonymous, unidentified sources that are not based in any way on the Complainants' personal knowledge. *See* MUR 4850 (Deloitte & Touche, LLP, et al.), Statement of Reasons of Commissioners Darryl R. Wold, David M. Mason, and Scott E. Thomas at 2 ("The burden of proof



**Conclusion**

For all of the foregoing reasons, we respectfully request that the Commission find no reason to believe the Respondents violated the Act, take no further action, and close the file.

Respectfully submitted,



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